

ARIZONA JUDICIAL COUNCIL'S COMMITTEE ON SUPERIOR COURT

MINUTES

**For Meeting held Friday, September 14, 2001
A.S.U. Downtown Center - Building C
Phoenix, AZ**

MEMBERS PRESENT:

Hon. Raymond W. Weaver, Jr. (Acting
Chair)
Hon. Silvia Arellano
Hon. Kenneth Lee
Hon. Leslie Miller
Hon. Mark Armstrong
Hon. Edward Dawson
Hon. Brian Ishikawa
Hon. Michael Jeanes
Hon. Gloria Kindig
Hon. Nanette Warner
Hon. John Leonardo
Hon. Nancy Lewis
Hon. Denise Lundin
Hon. Fred Newton
Mr. Gary Krcmarik

STAFF:

Theresa Barrett
Helen Tallent

MEMBERS ABSENT:

Hon. Roger Kaufman, Chair
Hon. Monica Stauffer
Hon. R. Douglas Holt
Hon. Cindy Jorgenson
Hon. Kirby Kongable
Hon. James Chavez
Mr. Marcus Reinkensmeyer
Mr. Oren D. Thompson
Mr. Don Stiles
Mr. Charles W. Wirken, Esq.

GUESTS:

David Sands
George Diaz, Jr.
Theresa Gonzales
Nancy Swetnam
J.R. Rittenhouse
Gordon Mulleneaux
Cari Gerchick

I. WELCOME AND OPENING REMARKS

Judge Roger Kaufman, Chair, was unable to attend the meeting because he had a jury trial that was delayed as a result of the terrorist attacks. Judge Raymond W. Weaver, Jr. agreed to facilitate the meeting in his absence and called the meeting to order at 9:45 a.m. He welcomed everyone and acknowledged new members and guests. All those present introduced themselves.

Judge Weaver announced that prior to the meetings scheduled start time, the Superior Court in Maricopa County experienced a bomb threat and the building had been evacuated. He suggested this could be the reason several Maricopa members were missing. However, due to a full agenda he opted to begin the meeting without all members present. Judge Weaver informed members he was sympathetic to their individual agendas, therefore, those who wanted to attend any of the memorial services scheduled for later in the day should feel free to do so. Committee members agreed this was appropriate.

II. APPROVAL OF MINUTES - March 9, 2001

The minutes from the March 9, 2001 meeting were previously distributed electronically. Revisions and corrections received from members prior to the meeting were incorporated by staff. Copies of the revised minutes were provided for review at the meeting.

MOTION: To approve the revised minutes for the March 9, 2001 meeting as distributed. Seconded and passed. COSC-01-006

Following the vote Judge Warner arrived. Approximately 10:00 a.m. Judge Hicks joined the group.

III. NEW BUSINESS

A. Presentation and Discussion of Legislative Proposals

David Sands, Legislative Officer for the Administrative Office of the Courts (AOC), described the procedures that would be followed for review of the legislative proposals before the Committee and the voting options. Those options include: 1) To include the proposal in the judiciary's legislative package, 2) NOT to include the proposal in the legislative package, and 3) Include the proposal in the legislative package with amendments.

Like last year, Committee members were provided with a voting device for use in conjunction with the Options Technology voting program. The votes were automatically tallied and the results displayed on a screen.

For each proposal, either David Sands or George Diaz, Jr. provided a brief overview of the proposal, highlighted major issues, reported the position taken by other committees that had reviewed the proposal and then opened the floor for discussion. David and George prepared cover sheets for all proposals submitted to them for the upcoming legislative session. These handouts were provided to members at the meeting.

David informed members that three unsuccessful proposals from last year's legislative package had already been approved by the Arizona Judicial Council (AJC) in June. The proposals forwarded for inclusion in this year's package include: Juror Pay, Drug Court Funding and the Interstate State Compact for Adult Offenders.

David and George provided information on the following legislative proposals:

02-01 Fiduciary Omnibus Legislation: Protects the assets of vulnerable persons by enhancing oversight of public and private fiduciaries registered by the Arizona Supreme Court. The proposals are part of a comprehensive series of recommendations offered by the Fiduciary Advisory Committee in a report approved by AJC. Statutory changes enhance sentencing for crimes against incapacitated or vulnerable persons; clarify the jurisdiction of the Program and the qualifications for certification; authorize issuance of criminal, rather than civil, "fiduciary arrest warrants" to enforce court orders in probate proceedings; increase funding for the Program for implementation of a statewide audit program; and, allow disclosure of information among governmental agencies for investigation of civil or criminal complaints against fiduciaries.

David indicated this legislative proposal was the result of statutory recommendations contained in the final report of the Fiduciary Advisory Committee established by the Chief Justice in June of 2000. This committee was formed in response to recent incidents of financial exploitation of incapacitated and vulnerable individuals. The Committees' charge

was to examine and make recommendations on required changes to statute, rules and procedures to ensure adequate protection of the public.

Following David's overview of the proposal, Nancy Swetnam, Director, Certification and Licensing Division, AOC, joined by J.R. Rittenhouse, Program Coordinator, Private Fiduciary Program, AOC, facilitated discussion of the changes included in the proposal. Questions and comments include the following:

Element 1: Enhanced Sentencing

- < It was suggested Arizona's present sentencing scheme gives parameters that fit most adult abuse cases. Concern was voiced regarding passing more legislation which would carve out exceptions for a particular group when current sentencing guidelines are broad enough to take in these factors already.
- < The Fiduciary Advisory Committee felt prosecutors were not giving adult abuse cases enough attention. After researching other states' statutes the Committee recommended amending the sentencing structure in the criminal code versus establishing breach of fiduciary duty as a criminal offense.

MOTION: Amend aggravating circumstances language proposed under A.R.S. § 13-702(C)(14) to read as follows: If the defendant was in a position of trust and confidence to a victim who is an incapacitated or vulnerable adult or a minor as defined in Titles 14 and 46 and the offense and the events involved conduct of the defendant directly related to the defendant's position of trust and confidence to the victim. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-007

Element 2: Fiduciary Program

- < Language should be changed in the appropriate statutes to enhance oversight of public and private fiduciaries and support AOC contention that program is a certification program versus a registration program.

MOTION: Amend language proposed under A.R.S. § 14-5641(A) by striking "registered with" and replacing it with "certified by." Make conforming changes throughout the statute. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-008

- < Judge Miller was uneasy with clarifying changes offered in the proposal (i.e., replacing professional in lieu of private). Specifically, she was concerned the proposed language suggests that public fiduciaries are not professional. Judge Miller recommended that selected adjectives for categories of fiduciaries be changed.

Element 2 (cont)

MOTION: Strike term "private" throughout A.R.S. § 14-5641 and do not replace with proposed identifier "professional." Additionally, in order to incorporate public fiduciaries, add new section under A.R.S. § 14-5641(K)(2) which would include a reference to A.R.S. § 14-5602. Finally, in A.R.S. § 14-5602 add a corresponding reference that public fiduciaries must be certified pursuant to A.R.S. § 14-5641. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-009

Element 3: Fiduciary Arrest Warrants

- < Several Arizona Superior Court judges informed the Fiduciary Advisory Committee they had problems enforcing court orders against fiduciaries. For example, in one case, a judge issued six bench warrants for a fiduciary. All remain outstanding. Under current law these orders are civil, not criminal bench warrants, are not entered into criminal history data banks and, therefore, have limited enforcement capabilities. The proposed legislation provides for criminal arrest warrants in probate matters, similar to those enacted by the Arizona legislature in recent years for child support cases.
- < Nancy Swetnam clarified that this type of arrest warrant would need to be used in only a handful of cases. Furthermore, this approach would be applied to only those individuals who are deliberately and continually violating court orders and would be used after a judge had exhausted all other options.
- < Judge Armstrong suggested fiduciary arrest warrants are different from child support arrest warrants. Child support arrest warrants are typically treated as a civil contempt order and can be purged by payment of child support owed. Alternatively, although fiduciary arrest warrants address orders where there is money owed they also could be attached to other orders such as producing documents.
- < Judge Armstrong pointed out the language proposed in A.R.S. § 14-5656 was modeled after the child support arrest warrant statute. This section was included in the child support legislation to serve as a retroactive component and ensure all outstanding child support warrants were captured. He suggested it was not necessary to make the proposal retroactive in the fiduciary legislation.

MOTION: Eliminate A.R.S. § 14-5655 in its entirety from the proposal. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-010

Element 4: Funding

- < Nancy Swetnam indicated the Fiduciary Advisory Committee was not wedded to any particular dollar amount increase. Rather, their strategy was to propose a number of different funding sources.
- < As it is unlikely there will be any general fund monies available for an appropriation, Denise Lundin recommended that the reference to this source of funding be removed from the proposal.

MOTION: Strike appropriation language and leave to the discretion of legislative lobbyists to determine increases necessary to generate projected budget figures. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-011

Element 5: Confidential Information

- < In conducting investigations of civil and criminal complaints against fiduciaries, problems have been encountered regarding the authority of government agencies to appropriately share information. Moreover, current law prohibits some government agencies from communicating with other agencies regarding a pending investigation, even if both agencies are examining the activities of the same fiduciary.

- < Nancy Swetnam indicated this element of the proposal was very important and implored Committee members to vote in favor of the suggested language.

MOTION: Approve this element of the proposal “as is.” Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-012

***FINAL VOTE ON 02-01: THE COMMITTEE VOTED 14-2 TO APPROVE AS AMENDED.**

02-02 Court Filing Fees: Integrates and clarifies certain filing fees and other charges required by statute to be collected by the superior court and limited jurisdiction courts. Among the most notable changes are: 1) An increase in case filing fees to support additional staff, training and case processing needs resulting from legislation in 2000 that increased the jurisdictional authority of justice courts; 2) adding a specific \$50 fee for filing an injunction against workplace harassment pursuant to A.R.S. § 12-1810; 3) increasing by one dollar the minimum clerk fee charged in justice and municipal courts; and, 4) adding federal and tribal agencies to the list of governmental entities that are exempt from payment of court fees.

Michael Jeanes offered the following comments for consideration:

- < Raising the filing fee for an injunction against harassment to \$50 would not create consistency statewide. This is only true for Limited Jurisdiction Courts. Actually, this would create a different type of fee. This is something they worked on eliminating last year by taking the five dollar fee away for these types of filings.
- < The effective dates for all fee proposals should be consistent. Otherwise, filing fees will change at the Superior Court multiple times as each bill takes effect. Courts need sufficient time for programming their automation systems.
- < The rationale behind A.R.S. § 12-304 is to ensure that Arizona taxpayers are not paying for operations or work related to items requested by other political subdivisions within the state. If the proposed legislation is passed, it would exempt federal and tribal agencies but not other states. If the intent was to blanket all government agencies, this was not achieved.

Denise Lundin, Clerk of the Court, Cochise County, informed members that her office changed their procedures and now charge the Federal government for all their requests. She indicated since implementing this policy her office has found that instead of being asked for copies of whole files they now receive requests for only the particular document required.

The Committee considered excluding the federal government and those tribal governments located within Arizona from the proposal. After discussion it was recommended that only state agencies should be exempted from paying for their requests.

MOTION: Recommend to leave the statute “as is.” Specifically, if a request is not from a state agency, then they will be charged. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-013

The Committee then proceeded to discuss the proposed increase to the Stop Payment Fee. It was argued that this fee increase had the potential of financially impacting an individual who may not be at fault. For example, an individual whose restitution check was lost in the mail would be assessed a larger fee by the court to reissue their payment check. This fee

would be reduced from the original amount owed to the victim. Although it was pointed out that \$25 is a “commercially reasonable” charge, since there are only a small number of requests for this type of customer service, it was recommended the fee be left at \$10.

MOTION: Recommend the Stop Payment Fee under A.R.S. § 12-284 remain \$10. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-014

The Committee then discussed other fee increases in the proposed legislation and made the following motions:

MOTION: Recommend that necessary changes be made to make effective dates for all proposed fee increases consistent. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-015

MOTION: Recommend January 1, 2003 as the consistent effective date for all fee increases. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-016

MOTION: Move the proposed Faxing of Documents fee to section (F) and change the charge to .50 per page. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-017

MOTION: Delete the \$18 Retrieval Of Files From Off-Site Locations fee from the proposal. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-018

MOTION: Recommend reducing proposed \$50 Filing Petition Against Workplace Harassment fee to \$25. Motion seconded. Motion failed by a vote of 5-11-0. COSC-01-019

After additional discussion of the intent of recent domestic violence legislation which removed the filing fees associated with Petition Against Harassment and Orders of Protection the following motion was made:

MOTION: Delete \$50 filing fee for Injunction Against Workplace Harassment from the proposal. No fee should be charged. Motion unanimously approved. 16-0-0. COSC-01-020

***FINAL VOTE ON 02-02: THE COMMITTEE VOTED 15-1 TO APPROVE AS AMENDED.**

02-03 Scan/Image Fee: Creates a fee for SCAN/IMAGE documents presented to the Clerk of the Court. The funds would be dedicated to purchasing technology that support SCAN/IMAGE documents.

Michael Jeanes indicated last year a study funded by the Commission on Technology (COT) recommended the Supreme Court move forward with the implementation of electronic document management systems (EDMS) technology. Accordingly, COT has endorsed the use of this technology, however, ongoing statewide technology projects tie up the state funds available for implementation.

To avoid confusion related to funding sources used for technology, George Diaz, Jr. clarified that court automation projects are not, and never have been, funded by the state (i.e., the judicial department's general fund). Rather, court automation projects are funded by counties or by fees and/or surcharges.

Michael indicated although the Maricopa County Board of Supervisor's had provided seed money to his office to assist with project implementation costs, this proposal was an attempt to establish a fund to pay for the ongoing costs, funded by the users of the system. Members were provided with a copy of the Document Retrieval Fund statute (A.R.S. § 12-284.01). It was suggested the existing statute could serve as a model for the proposed new fund. Michael explained that the proposed SCAN/IMAGE fee would be in addition to the filing fee charged for a new complaint or answer and would be applied to every case.

Discussion followed. Comments and issues mentioned include the following:

- < Michael Jeanes reported that a study done in Maricopa county shows that once a system is in place it is very cost effective. This proposal will assist counties to implement these projects.
- < Judge Dawson suggested proposed language which requires that the court have approval from the county board of supervisors to use monies in the fund could prove problematic for several counties. It was suggested the Board should be removed from the decision making process to avoid conflicts in administration of the fund.

MOTION: Recommend amend proposal by deleting "subject to approval by the county board of supervisors" from proposed language. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-021.

- < Judge Warner suggested the phrase "The clerk, in coordination with the presiding judge" is too vague. Specifically, she questioned what constitutes "coordination." Therefore, to ensure the clerk of the superior court meets with the presiding judge before expending funds, it was recommended that the proposed language be changed.

MOTION: Recommend deleting "in coordination with the presiding judge" and substitute with the phrase "with the approval of the presiding judge." Motion seconded.

Denise Lundin suggested that the Clerk's Association would oppose this recommended language if approved. Before taking a vote, Judge Weaver opened the floor for further discussion. In an attempt to satisfy both judges and clerks the following motion was made:

MOTION: Recommend leave proposed language "as is" (i.e., "in coordination with the presiding judge" vs. "with the approval of the presiding judge"). Motion seconded. Motion approved. 13-3-0. COSC-01-022.

***FINAL VOTE ON 02-03: THE COMMITTEE VOTED 13-3 TO APPROVE AS AMENDED.**

Due to time constraints, compounded by the fact that several members reported they would need to leave the meeting early due to other obligations, Judge Weaver recommended prioritizing the remaining proposals. After establishing a ranking, the Committee could then discuss those deemed most important out of their numbered sequence. Members agreed with the plan.

02-05 Employer Compensation of Jurors: Requires employers to pay regular wages for the first five days of jury duty that would otherwise be earned to jurors who appear for service or are selected for trial. The proposal applies to full-time, part-time, temporary and casual employment.

Theresa Gonzales, AOC Legislative Team Member, presented background information for this proposal. Theresa reported that Alabama, Connecticut, Colorado, Louisiana, Massachusetts, Nebraska, New York and Tennessee all have statutes requiring employers compensate their employees. Additionally, Theresa informed members that in 1998, the National Center for State Courts conducted a study in Arizona to examine juror fee provisions. The study indicated 37% of Arizona jurors were not being paid by their employers for jury service.

Discussion followed. Comments include the following:

- < All major employers in Gila county already pay their employees. This proposal may hurt the small businesses.
- < Judge Hicks voiced concern that the proposal could place a burden on single parents who have a nanny/babysitter who is called for jury duty. If this proposal is approved, that parent would have to pay the employee as well as find other child care. Judge Leonardo suggested there should be exceptions that cover this situation.
- < David Sands questioned whether it was the court's place to propose legislation that advocates employers bear a burden versus a public entity.

***FINAL VOTE ON 02-05: TO APPROVE (5), TO REJECT (8) AND AS AMENDED (2).**

02-06 Regional Jury Summoning: Enables jurors to be summoned to the most proximate courthouse to their residence by creating judicial districts in counties where the superior court has more than one location. Authorizes a jury commissioner to draw and summon a trial jury from a particular county pursuant to court rule.

Comments on this proposal include:

- < Language should be added to specify "in counties with a population larger than X."
- < Since the proposed language is permissive, this process would only be instituted in those areas where it made sense to do so.
- < George Diaz indicated this legislation was proposed last year by Senator Cirillo. It was opposed by both defense counsel and prosecutors.
- < Judge Weaver questioned whether the court should carve out statutes for a specific county?
- < Judge Miller did not feel the Committee should limit the ability of a county to implement this process if it could be done without harm to the system or juror diversity.

- < Judge Arellano suggested that appropriate language be included to ensure that judicial districts would be drawn so that they demonstrate a representative juror pool.
- < Judge Armstrong recommended that Supreme Court rule should govern the process to ensure representativeness.
- < To avoid confusion to jury districts already established by local court rule, it was suggested the areas be called jury summoning districts.

MOTION: Recommend proposed language in A.R.S. § 21-132 be amended to read “... may draw and summon a trial jury from any portion of the county designated by Supreme Court rule.” Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-023.

MOTION: Strike the term “judicial district” throughout A.R.S. § 21-132 and replace with “juror summoning district.” Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-024.

***FINAL VOTE ON 02-06: THE COMMITTEE VOTED 13-3 TO APPROVE AS AMENDED.**

02-09 Terms of Pro Tempore Judges: Amends statutes by extending the term of pro tempore judges from six to twelve months.

George informed members that the Limited Jurisdiction Committee (LJC) indicated they would like language added to include justice court pro tems in the proposal. The group did not choose to recommend language and referred it back to LJC for further action.

***FINAL VOTE ON 02-09: THE COMMITTEE VOTED 16-0 TO APPROVE.**

Following the vote on 02-09 Judge Newton departed.

Break for Lunch

02-11 Adoption Fee: Clarifies that the Attorney General is not obligated to pay the filing fee required by A.R.S. § 8-127 to be paid to the clerk of the superior court in adoption proceedings.

Judge Warner informed members it is the adopting parents, not the state, who are filing these types of actions. Furthermore, this is a fee that is currently reimbursed through adoption subsidies.

Michael Jeanes indicated in the past, these types of cases were handled by the County Attorney’s Office and the fee was paid. Alternatively, in 2000, the Attorney General’s Office began to represent DES wards (i.e., wards of state) and argued they are exempt from paying mandated statutory fees pursuant to A.R.S. § 12-304 since they are representing the parents. Michael explained this proposal was Maricopa’s attempt to gain clarification on who is exempt and specifically who should pay.

No proposed language was offered for consideration. Therefore, the Committee deemed a vote to reject would suggest that all agencies should pay.

***FINAL VOTE ON 02-11: THE COMMITTEE VOTED 12-1 TO REJECT.**

02-12 Mental Health Records: Allows the Department of Public Safety (DPS) access to court records to obtain the name, date of birth, social security number, date of treatment order and upon termination of treatment, the date of termination of those persons the court has found to constitute a danger to him/herself or others.

Those who have been found to constitute a danger to themselves or others, pursuant to court order, are prohibited from: possessing firearms, the issuance of a permit to carry concealed weapons, the issuance of a security guard registration certificate. DPS is statutorily responsible for the background checks that verify the qualifications for the above privileges. The proposer strongly believes that in order to effectively enforce the qualification of applicants, DPS needs access to the information generated by the court's action.

Judge Leonardo felt this was an important proposal but perceived it as a prosecutorial matter. He questioned whether the Committee was the appropriate body to deal with it.

George Diaz, Jr. revealed the proposal had been submitted by Barbara LaWall, Pima County Attorney, who had received special permission to have it considered for inclusion in the judicial package. George informed members this legislation was proposed last year and defeated.

Michael Jeanes indicated the clerks, along with the court, opposed the bill because of the short time line offered for implementation and lack of funding. Members agreed this is good public policy, however, there needs to be an implementation plan first. The Committee is supportive of the concept.

***FINAL VOTE ON 02-12: TO APPROVE (1), TO REJECT (13) AND AS AMENDED (1).**

02-16 Sealing/Redaction of Records: Seals and redacts the public records of judicial officers.

This proposal amends A.R.S. § 28-454, 11-483 and 11-484, regarding the Department of Transportation, County Recorder, and County Assessor and County Treasurer records respectively. The proposed amendments are based on the provisions of A.R.S. § 16-153 regarding voter registration records, which currently includes a means for prohibiting access to identifying information such as a judicial officer's address and telephone number.

Judge Armstrong pointed out that statutes currently exist for prohibiting access to identifying information for peace officers. This proposal will add justices of the Supreme Court, judges of the Court of Appeals, judges or commissioners of the Superior Court and municipal court judges to the statute. The proposal does not include justices of the peace.

Research conducted by Maricopa Superior Court Administration staff and the office of the Maricopa County Attorney indicates that there is currently insufficient legal authority to otherwise block access to such identifying information through, for example, a local administrative order.

Denise Lundin requested the proposal be amended to include the Clerk of the Court.

MOTION: Include the Clerk of the Superior Court in the proposal. Make appropriate changes throughout the statute. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-025.

***FINAL VOTE ON 02-16: TO APPROVE (2), TO REJECT (1) AND AS AMENDED (11).**

02-08 Conciliation Fees for Non-IV-D Paternity Cases: Adds paternity and maternity cases to other family law cases in which parties are currently required to pay a fee to carry out the purposes of the conciliation court. Title IV-D cases that are prosecuted by the state child support agency would not be subject to the fee.

If approved, this proposal's effective date would be January 1, 2003. There was no further discussion.

***FINAL VOTE ON 02-08: THE COMMITTEE VOTED 15-0 TO APPROVE.**

02-17 Probation Omnibus: Clarifies adult surveillance officers have peace officer status in the performance of their duties. Creates an offense for eluding or evading probation supervision. Creates an offense for probation staff having sex with probationers. Creates a Deferred Retirement Option Plan (DROP) for probation officers who are eligible for retirement.

There was no opposition to this proposal.

***FINAL VOTE ON 02-17: THE COMMITTEE VOTED 14-0 TO APPROVE.**

Following the vote on 02-17 Judge Lee, Judge Leonardo and Judge Miller departed. No quorum existed for votes on remaining proposals.

02-04 Excess Proceeds from Trustee Sales: Ensures that monies derived from a trustee's sale of property will be applied according to legislatively mandated priorities by establishing revised procedure for disposition of sale proceeds.

David Sands indicated the proposed statute will eliminate the problem of parallel actions by requiring the trustee to first file a civil action and to notify all potential claimants before depositing the funds with the County Treasurer. Thereafter, all claims for the funds will be made in that one case.

Judge Armstrong indicated this was a Maricopa proposal which originated in their Civil Study Committee. Members included the entire civil bench as well as a number of prominent local attorneys.

***FINAL VOTE ON 02-04: THE REMAINING MEMBERS' OPINION WAS 12-0 TO APPROVE.**

02-07 Probate Administration Compensation: Allows investigators, accountants or attorneys to be reasonably compensated for services rendered when ordered by the court in cases involving probate of wills or administration of a decedent's estate in the same manner as is presently authorized in guardianship and conservatorship cases.

This proposal is the result of recent recommendations by the Arizona Supreme Court's Fiduciary Advisory Committee regarding the need for increased monitoring and oversight of court-appointed fiduciaries. Arizona's probate courts are expected to realize a greater need for providing staff investigative and accounting resources in the administration of pending probate cases. The proposed legislation will allow probate courts to begin assessing fees for investigation services and accounting reviews conducted in the probate of decedents' estates consistent with similar fees presently being assessed pursuant to A.R.S. §§ 14-5314 and 14-5414 in pending guardianship and conservatorship cases.

***FINAL VOTE ON 02-07: THE REMAINING MEMBERS' OPINION WAS 12-0 TO APPROVE.**

02-10 Transmittal Fee and File Time Limit: Changes the due date for transmittal fees in change of venue orders from 20 days of the change of venue order to 20 days of the new court's receipt of the case. Also changes the due date for filing fees in change of venue cases from 30 days of the change of venue order to 30 days after the new court receives the case file.

Michael Jeanes indicated the proposed changes will help improve work flow in the Clerk's office.

***FINAL VOTE ON 02-10: THE REMAINING MEMBERS' OPINION WAS 12-0 TO APPROVE.**

02-13 Notification by Appellate Court: Requires appellate courts to transmit notification of their action to the Motor Vehicle Division (MVD) in certain criminal cases.

Michael Jeanes explained this proposal would apply to only those cases that go up to the Court of Appeals from the Superior Court. The intent behind suggested changes is to ensure whatever court renders the final decision it is that Clerk of Court who is then required to notify MVD/DPS.

No language was provided for review. Committee members indicated they would like to see where the proposed language would go in the statutes.

Michael Jeanes indicated he had not discussed this proposal with the Clerk at the Court of Appeals.

***FINAL VOTE ON 02-13: THE REMAINING MEMBERS' OPINION WAS TO APPROVE (7), TO REJECT (5) AND AS AMENDED (0).**

02-14 Interstate Compact Probation Fees: Clarifies that probationers accepted under the interstate compact pay the Clerk of the Court the cost of the deoxyribonucleic acid (DNA) testing within 30 days of arrival in the county where they are being supervised. Requires the Clerk of the Court distribute the funds via the county treasurer to the Arizona DNA Identification System Fund.

Gordon Mullenaeux informed members that current statutes do not indicate to whom or when the interstate compact probationer shall pay the fee. Consequently, the Arizona Association of Superior Court Clerks requests the law be made consistent with other statutes that require individuals to pay their fees to the Clerk of the Court for transmittal to the county treasurer to be distributed to the Arizona DNA Identification System Fund.

George Diaz, Jr. indicated the Committee on Probation (COP) approved this proposal.

***FINAL VOTE ON 02-14: THE REMAINING MEMBERS' OPINION WAS 11-0 TO APPROVE.**

02-15 Domestic Violence: Makes technical and substantive changes in laws regarding domestic violence.

David Sands suggested breaking the proposal into five separate pieces for discussion. Theresa Barrett directed members to materials included in the supplemental package

provided to members at the meeting. The following is a summary of the comments made by members regarding each piece.

(1) Make consistent presently conflicting provisions of law regarding the effective date of modifications to protection orders.

There was no objections to this component of the proposal.

(2) Include injunctions against harassment in the statute that elevates an assault to an aggravated assault if committed while the perpetrator is subject to a protection order.

MOTION: Recommend that suggested changes to A.R.S. § 13-1204 not be included in the final proposal. Motion seconded. Motion approved. 10-2-0. COSC-01-026

(3) Add the objective standard “reasonably should have known” to statutes that increase terms of sentencing when a felony domestic violence offense is committed against a pregnant victim.

David posed the question to members, “Should courts decide the standard of proof or is this a prosecutorial issue?” The group agreed this was an accepted legal standard and was reasonable.

(4) Make consistent the sentencing provisions of A.R.S. §§13-3602 (L) and 13-711 regarding domestic violence offenses committed against pregnant victims.

Parente v. New Jersey rationale would apply to this suggested change and a jury trial would be required. It was suggested this could be handled by an interrogatory and would not be a burden on the court.

(5) Include spousal rape within the definition of domestic violence.

The crime already exists. This suggestion will simply add it to domestic violence offenses.

***FINAL VOTE ON 02-15: THE REMAINING MEMBERS’ OPINION WAS TO APPROVE (2), TO REJECT (2) AND AS AMENDED (8).**

B. Prioritization of Legislative Proposals

Having completed the initial review of each assigned proposal, Committee members were asked to identify priorities from those proposals that the Committee voted to include in the judiciary’s legislative package. Each member was allowed four votes, if they wished, all four votes could be placed on one proposal. The results are displayed in the following table.

PROPOSAL	Votes for Priority
02-16 Sealing/Redaction of Records	10 out of 12
02-09 Terms of Pro Tempore Judges	9 out of 12
02-01 Fiduciary Omnibus Legislation	8 out of 12

02-08 Conciliation Fees for Non-IV-D Paternity Cases	7 out of 12
02-06 Regional Jury Summoning	6 out of 12
02-03 Scan/Image Fee 02-15 Domestic Violence	3 out of 12
02-02 Court Filing Fees 02-07 Probate Administration Compensation	1 out of 12

Following discussion it was decided not to break the ties and to forward to the Arizona Judicial Council as priorities all nine of the proposals that received votes.

IV POST TRIAL JUDGE/JURY CONTACT (Old Business)

In order to include discourse related to the pending advisory opinion of Judicial Conduct Commission, Committee members decided to table discussion of this issue until their winter meeting.

ACTION ITEM: When issued, Theresa Barrett will circulate a copy of the Judicial Conduct Commission's advisory opinion to members via email.

XVI. INFORMATION ITEMS

Theresa Barrett, Court Specialist, AOC, referred members to the Fee Deferral and Waiver Charts provided by Steve Nelson, Program Manager, Judicial Enforcement Unit, Yuma County Superior Court. In December 1999 Yuma started using the definition approved by COSC and AJC and began assessing all but those that are permanently unable to pay. Steve felt the charts illustrated that the indigent can and will pay when they are given a compassionate payment plan. Theresa expressed Steve's appreciation to the Committee for their support in securing the language that allows Yuma's Judicial Enforcement Unit to continue their collection efforts in this area. Other information items presented to members include: Decision regarding Prop 200 eligible defendants and the link to the Administrative Order/Arizona Judicial Code of Administration website.

Theresa announced that in light of recent state budget cuts in the future hotel, per diem and mileage claims will need to be submitted to the member's county for reimbursement. Furthermore, the Committee's meals would no longer be paid for by the AOC. Theresa offered to make arrangements for catering and collecting money from members if the Committee wanted to continue to their practice of working through lunch. Other options discussed included bringing a sack lunch or breaking for lunch. If members have any questions on new policies, they should contact Theresa at (602)542-9364.

VI. SCHEDULE NEXT MEETING DATE/PLACE

The next meeting date was not scheduled.

ACTION ITEM: Theresa Barrett will compile members' availability and provide the Committee with information on the location and hotel accommodations once a date is determined.

ADJOURNMENT

The meeting was adjourned at 2:45 p.m.